

Working Copy

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September 11, 2006

Mr. Benjamin Tobler
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

E-mail: btobler@waterboards.ca.gov

RE: Comments on the Amendment to the Water Quality Control Plan – San Diego
Region to Incorporate the Chollas Creek Metals TMDL

Dear Mr. Tobler:

The California Department of Transportation (Department) supports improvement of water quality in Chollas Creek, and appreciates the opportunity to comment on the Chollas Creek Metals Total Maximum Daily Load (TMDL). Regarding its California Environmental Quality Act (CEQA) environmental documents, we offer the comments below.

General Comments

The purpose of this document is to disclose the types of environmental impacts that may result from the construction and operation of a "representative" example of each Best Management Practice (BMP) that may be chosen for use. The project description provides insufficient information about the types of structural mitigation that may be implemented as part of the metals control program. While the document mentions the types of mitigation projects that may be implemented by permitted agencies, it does not clearly explain how these projects would be constructed and the actions necessary to install various mitigation projects. The frequency, magnitude and duration of each action are unknown, making it difficult to understand the severity of potential environmental impacts. The project description prepared by RWQCB staff should have provided some graphics showing what these various basins and filters look like and how a typical or representative BMP might be implemented. General descriptions, their construction, and a graphic for each BMP, would greatly enhance the layperson's understanding of how they might impact the environment. While site-specific analysis is beyond the scope of this study and not warranted at this stage of the regulatory program, the San Diego Regional Water Quality Control Board (RWQCB) has at

minimum, a duty to disclose, at a programmatic level, the types of impacts that might occur from the construction and operation of various types of BMPs (detention basins, wet basins, infiltration basins, sand filters, and diversions systems) in the Chollas Creek watershed. The RWQCB has primary responsibility to properly disclose, at a programmatic level, the types of impacts that can reasonably be expected to occur from program implementation. Each of these pollution control systems will have potential impacts that should be disclosed. For example, the detention and infiltration of metal-laden storm water runoff could potentially cause shallow groundwater degradation and/or localized scour. This issue, and how the RWQCB will deal with indirect impacts to groundwater, should have been addressed more fully in the document. More specificity about the various control devices and how they are constructed and installed will enable meaningful environmental analyses.

This document should be functionally equivalent to a programmatic Environmental Impact Report (EIR) with the primary goal of disclosing the cumulative impacts of the regulatory program. As stated in the CEQA guidelines (14 CCR 15168), a programmatic EIR should be for projects that are related geographically, logical parts in a chain of contemplated actions, connected as part of a continuing program and carried out under same authorizing statute or regulatory program and have similar environmental impacts. It is clear this program meets these four tests. In addition, if this document was prepared properly identifying potential impacts and mitigation measures, subsequent projects proposed by the permittees could agree to adopt mitigation recommendations and might rely upon it for their CEQA compliance. In its current state, all BMP implementation projects will require at a minimum an initial study by the various cities and organizations that will be regulated by this program.

Specific Comments

The RWQCB needs to provide substantial evidence for each determination in the check box response in the initial study. The Board appears to only prepare responses for significant or potentially significant impacts and no response whatsoever for "No Impact" responses. The Board provides no factual information or substantial evidence to support many of these no impact conclusions. Mitigation measures, when discussed, are addressed only generically and not in a format that provides specificity regarding their timing, responsible party, standards of success and funding information as required by CEQA.

Aesthetics

There is no information to support the No Impact claims for three out of four checklist questions. No Impact conclusions regard scenic vistas, historic buildings, or scenic resources. This section needs to provide documentation and evidence to support these conclusions.

Air Quality

Construction of these various BMPs will undoubtedly generate short-term construction emissions from heavy equipment needed to grade areas for new basins or construction of sand filters. Street sweepers and equipment necessary for maintenance of BMPs, such as generators, could produce emissions as well. The RWQCB should disclose numerical estimates of the air emissions from a typical or representative BMP project and provide mitigation measures for those impacts. Various air quality predictive models, e.g., urban emissions (URBEMIS) and others, supported by the California Air Resources Board (CARB) should be used to make reasonable predictions. Again, no information is provided to support these conclusions.

Biological

The mitigation measures discussed in this section do not meet CEQA requirements. Measures should be discussed in detail and describe various details including timing, agency responsible, funding and measures of success. These general concepts for mitigation do not provide guidance to the cities that will comply with the TMDL and CEQA. This section provides little documentation of impacts and provides only a generic discussion of mitigation. The document should have at least presented biological information and results from the California Natural Diversity Database (CNDD), and described where existing rare, threatened or endangered plants and animals are found in the Chollas Creek watershed. Creek diversion systems could have impacts on water resources and aquatic resources in Chollas Creek and should be disclosed as required. To defer this analysis and simply state that this will be done later by the cities and others is improper and presents inadequate disclosure under CEQA. The Board is required to document the potential impacts from this regulatory program at a general level and describe in sufficient detail measures that could be implemented to reduce impacts to less than significant levels. It is a highly urbanized environment, but there is always a possibility that species might be impacted from indirect activities associated with a mitigation project due to timing, proposed laydown, and vehicle parking. The document should have identified these areas within the watershed, as well as the range of mitigation measures that could be employed by project-level permittees.

Vector control, groundwater quality, and hazards are discussed in the biology section and are misplaced. These issues should be discussed in their appropriate sections of the checklist.

Water

In general, the RWQCB should focus on the benefits that will be derived from removing metals from the drainages and tributaries in the Chollas Creek watershed in this section, since it is one of the primary goals of the TMDL. No substantial evidence or citation of literature is provided to backup the No Impact determinations provided in the document for the eight checklist questions. Specifically, the potential for installed treatment BMPs to affect groundwater should be addressed. This section needs to be revised accordingly.

Animal Life

As previously noted, the document should have presented data from the CNDD with regard to Rare, Threatened, or Endangered (RTE) wildlife within the Chollas Creek watershed and the Estuary. It is inadequate to defer this analysis to subsequent permittee projects.

This section needs to provide better descriptions of mechanisms of potential impacts and recommended mitigation measures that maybe adopted and implemented by Tier 2 permittees to address species protected by the Migratory Bird Treatment Act (MBTA). As currently written, the reader has no idea of the range of impacts to these species.

Noise

The noise section needs to provide more specificity with regard to potential impact and mitigation measures that would be used by those entities implementing mitigation projects. The document should have presented information about noise ordinances or policies in noise elements of general plans of the various cities in the watershed. Predictions of noise levels from various construction activities should have been estimated to provide the reader with a sense of noise impacts and mitigations.

Transportation and Circulation

This section should at least attempt to quantify traffic impacts from the proposed project using various assumptions for maintenance of these devices. No substantial evidence or citation of literature is provided to back up the No Impact determinations provided in the document for the seven checklist questions. This section needs to be revised accordingly.

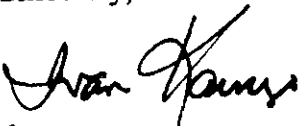
Mr. Benjamin Tobler
September 11, 2006
Page 5

Cultural

This section does not provide any evidence or documentation to support their conclusions and needs to be revised. There are potentially many historical and cultural sites in the Chollas Creek region that could potentially be impacted by a future implementation project. RWQCB should have conducted a records search of the Information Center of the California Historical Resources Information System. In addition, the document needs to present an analysis of the range of impacts on these cultural resources, which might occur.

We hope these comments are helpful. If you have any questions, please contact Ivan Karnezis at (916) 653-5417.

Sincerely,


for

PAUL A. LAMBERT

Acting Chief

Office of Storm Water Policy, Planning and Permitting